

DEPARTMENT OF FOOD AND AGRICULTURE

1220 N Street, Room A-116
Sacramento, CA 95814

WILLIAM (BILL) J. LYONS, JR., Secretary

**Title 3, California Code of Regulations, Division 2**

(Certificate of Compliance filed with the Office of Administrative Law July 16, 2003; regulation is in effect)

Chapter 9. Informal Hearings**Article 1. Informal Hearing Requirements****Section 1310. Scope of Coverage.**

(a) Any person, or his or her duly authorized representative, may contest a notice of adverse determination and request an informal hearing as outlined in this article. The informal hearing proceedings pertain to a violation of any of the following sections of the Food and Agricultural Code:

(1) Importation requirements for horses or other Equidae pursuant to section 9641.5.

(2) Brucellosis vaccination requirements pursuant to sections 10341, 10342 and Article 4 (commencing with section 10351), Chapter 3, Part 2, Division 5.

(3) Importation requirements for cattle pursuant to section 10610.

(4) Importation requirements for swine pursuant to section 10721.

(5) Approved processing or disposal of garbage aboard any vessel or aircraft in the state pursuant to sections 16101, 16151, 16152, 16153 and 16154.

(6) Control of performance and disposition enhancing medications for horses in public horse shows, events, competitions, or sales pursuant to Chapter 8 (commencing with section 24000), Division 11.

(7) Inspection and sampling of milk, milk products, and products resembling milk pursuant to Article 2 (commencing with section 32731), Chapter 2, Part 1, Division 15.

(8) Testing of milk and milk products for the presence of drug residues pursuant to Article 4 (commencing with section 32761), Chapter 2, Part 1, Division 15.

NOTE: Authority cited: Section 407, Food and Agricultural Code; and Section 11400.20, Government Code. Reference: Sections 9641.5, 10341, 10342, 10610, 10721, 16101, 16151, 16152, 16153, and 16154, Food and Agricultural Code; Article 4 (commencing with section 10351), Chapter 3, Part 2, Division 5, Food and Agricultural Code; Chapter 8 (commencing with section 24000), Division 11, Food and Agricultural Code; Article 2 (commencing with section 32731), Chapter 2, Part 1, Division 15, Food and Agricultural Code; and Article 4 (commencing with section 32761) Chapter 2, Part 1, Division 15, Food and Agricultural Code.

Section 1310.1. Filing Deadlines and Procedures.

(a) The respondent may contest a notice of adverse determination for any violation specified in section 1310 and may request an informal hearing by written correspondence to the Department of Food and Agriculture, 1220 "N" Street, Room A-107, Sacramento, California 95814.

(b) The respondent must submit a request for an informal hearing to the Department in writing within 30 days from the date of the notice of adverse determination. If the notice of adverse determination requires the holding of animals or animal products at a site specified, the respondent must submit the request by mail,

facsimile, or by telephone within 72 hours of the date of the notice of adverse determination.

(c) The respondent may request a formal hearing in lieu of an informal one. The respondent must do so within the filing deadlines for requesting an informal hearing set forth in subsection (b). Any request must be accompanied by a written statement in support of it. The hearing officer shall determine whether to proceed with an informal hearing or whether a formal hearing or other appropriate administrative proceeding may be required by statute pursuant to Chapter 5 (commencing with section 11500), Part 1, Division 3, Title 2 of the Government Code. The respondent will be expected to waive the time constraints of this article on the record if any administrative proceeding other than an informal hearing is requested by respondent or required by the Department.

(d) Failure to present a timely request for a hearing constitutes a waiver of the respondent's right to contest the notice of an adverse determination. Untimely requests for a hearing shall be denied by the Department.

(e) If the notice of adverse determination places a hold on a product or animal, or requires a person to cease operations, the notice of adverse determination shall remain in effect pending the outcome of the informal hearing.

NOTE: Authority cited: Section 407, Food and Agricultural Code; and Section 11400.20, Government Code. Reference: Chapter 4.5 (commencing with section 11400), Part 1, Division 3, Title 2, Government Code; and Chapter 5 (commencing with section 11500), Part 1, Division 3, Title 2, Government Code.

Section 1310.2. Hearing Schedule and Notification.

(a) Supplemental to any procedures set forth in Chapter 4.5 (commencing with section 11400), Part 1, Division 3, Title 2, Government Code, the Department shall schedule an informal hearing within 30 days from the receipt of the request from the respondent. If the notice of adverse determination requires the holding of animals or animal products at a site specified, the Department shall schedule the hearing within 72 hours of the receipt of the request for an informal hearing.

(b) Formal hearings shall be scheduled by the Department consistent with the provisions of Chapter 5 (commencing with section 11500), Part 1, Division 3, Title 2 of the Government Code, and any applicable regulations enacted pursuant to these provisions.

(c) The Department shall provide a notice of the informal hearing to the respondent containing the following information:

- (1) Date, location, and time of the informal hearing;
- (2) Departmental contact information including applicable telephone and facsimile numbers;
- (3) Subject matter of the adverse determination; and,
- (4) Any other information or documentation relative to the adverse determination.

NOTE: Authority cited: Section 407, Food and Agricultural Code; and Section 11400.20, Government Code. Reference: Chapter 4.5 (commencing with section 11400), Part 1, Division 3, Title 2, Government Code; and Chapter 5 (commencing with section 11500), Part 1, Division 3, Title 2, Government Code.

Section 1310.3. Conduct of Hearings.

(a) If a formal hearing is requested by the respondent or otherwise required by statute or regulation, it shall be conducted consistent with the provisions of Chapter 5 (commencing with section 11500), Part 1, Division 3, Title 2 of the Government Code.

(b) Informal hearings shall be conducted pursuant to Chapter 4.5 (commencing with section 11400), Part 1, Division 3, Title 2 of the Government Code and shall be conducted as follows:

(1) The informal hearing shall be presided over and conducted by a hearing officer designated by the Department.

(2) The standard of proof to be applied by the hearing officer shall be preponderance of the evidence unless statutes or regulations applicable to the determination provide a higher standard.

(3) Hearings may be conducted by telephone at the discretion of the hearing officer subject to Government Code section 11440.30.

(4) Subject to the provisions of Government Code section 11425.50, the decision of the hearing officer shall be in writing with a brief statement of the conclusion and findings to support the conclusion. The decision may be handwritten.

(5) The decision shall be issued within 14 days after the conclusion of the hearing and may be issued orally at the conclusion of the hearing subject to written confirmation.

(6) The decision shall be served on the respondent either by personal service or, if available, by facsimile transmission.

(7) The hearing officer's decision shall be effective immediately upon first articulation under subsection (b)(4) or (b)(5) above, and shall be final.

(8) The respondent may appeal the hearing officer's decision by filing a petition for a writ of administrative mandamus in accordance with the provisions of the Code of Civil Procedure subject to the statutes relating to the Department.

(9) The Department shall provide a copy of the decision to any interested party upon written request.

NOTE: Authority cited: Section 407, Food and Agricultural Code; and Section 11400.20, Government Code. Reference: Chapter 4.5 (commencing with section 11400), Part 1, Division 3, Title 2, Government Code; and Chapter 5 (commencing with section 11500), Part 1, Division 3, Title 2, Government Code.

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